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Attorney for Cole Lusby

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COLE LUSBY,

Defendant,

CASE NO. 2:18-CR-00136-APG-PAL

**STIPULATION TO CONTINUE TRIAL
DATE**
(First Request)

IT IS HEREBY STIPULATED AND AGREED, by and between Elham Roohani and Bianca Pucci, Assistant United States Attorneys, counsel for the United States of America; and Kathleen Bliss and, counsel for defendant Cole Lusby (“Mr. Lusby”), that the trial date currently scheduled for December 14, 2020, at 9:00 a.m., be VACATED and reset to a later time convenient for the Court, but no sooner than three weeks from December 14, 2020

This stipulation is entered for the following reasons:

1. The Court set trial on December 14, 2020, with calendar call on December 8, 2020. (ECF No. 115, Order Regarding Trial).
2. Travel and personal exposure to others, especially indoors, have become increasingly concerning because of an alarming spike in infection and death, with Nevada hospitals at near or over capacity. Indeed, on Tuesday, November 24, 2020, the Governor of Nevada implemented a three-week pause in, among other

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things, indoor gatherings.

3. Prior to the Governor’s directive, on November 12, 2020, the Chief Judge of the U.S. District Court for the District of Nevada issued a Third-Amended Order 2020-03. Temporary General Orders, 2020-02, 2020-04, 2020-05, 2020-08, and 2020-09 are still in place. The Court ordered the temporary closure of the Clerk’s office and directed that in-person court appearances should cease at this time. In the event any hearing must go forward, the Court will conduct the hearing via video or teleconference. The parties do not believe that a trial, even a bench trial as here, should be conducted by video or teleconference due to constraints on constitutional rights, such as cross-examination as provided in the Sixth Amendment.
4. Mr. Lusby’s Motion to Dismiss the superseding indictment, ECF No. 118, is pending with this Court, which tolls Speedy Trial under 18 U.S.C. § 3161(h)(1)(D). The government’s response is due on December 4, 2020, and a reply is due on December 11, 2020.
5. Counsel for defendant and counsel for the United States agree to this stipulation.
6. Defendant is not in custody and does not object to this continuance.
7. The additional time requested by this stipulation is excludable in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), when considering the factors under 18 U.S.C. §§ 3161(h)(7)(B)(i).
8. The additional time requested herein is not sought for purposes of delay and the denial of this request for a continuance could result in a miscarriage of justice.
9. In light of the above, the parties stipulate to continue Mr. Lusby’s trial date.

1 Dated this 25th day of November 2020.

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4 /s/ Elham Roohani

5 Elham Roohani
6 Counsel for the United States of America

/s/ Kathleen Bliss

Kathleen Bliss
Attorney for Cole Lusby

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff;

vs.

COLE LUSBY,

Defendant.

CASE NO. 2:18-CR-00136-APG-PAL

**FINDINGS OF FACT, CONCLUSION OF
LAW AND ORDER**

FINDINGS OF FACTS

Based on the pending Stipulation of counsel, good cause appearing therefore, the Court finds that:

1. The Court set trial on December 14, 2020, with calendar call on December 8, 2020. (ECF No. 115, Order Regarding Trial).
2. Travel and personal exposure to others, especially indoors, have become increasingly concerning because of an alarming spike in infection and death, with Nevada hospitals at near or over capacity. Indeed, on Tuesday, November 24, 2020, the Governor of Nevada implemented a three-week pause in, among other things, indoor gatherings.
3. Prior to the Governor's directive, on November 12, 2020, the Chief Judge of the U.S. District Court for the District of Nevada issued a Third-Amended Order 2020-03. Temporary General Orders, 2020-02, 2020-04, 2020-05, 2020-08, and 2020-09 are still in place. The Court ordered the temporary closure of the Clerk's office and directed that in-person court appearances should cease at this time. In the event any hearing must go forward, the Court will conduct the hearing via video or teleconference. The parties do not believe that a trial, even a bench trial

as here, should be conducted by video or teleconference due to constraints on constitutional rights, such as cross-examination as provided in the Sixth Amendment.

4. Mr. Lusby's Motion to Dismiss the superseding indictment, ECF No. 118, is pending with this Court, which tolls Speedy Trial under 18 U.S.C. § 3161(h)(1)(D). The government's response is due on December 4, 2020, and a reply is due on December 11, 2020.
5. Counsel for defendant and counsel for the United States agree to this stipulation.
6. Defendant is not in custody and does not object to this continuance.
7. The additional time requested by this stipulation is excludable in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), when considering the factors under 18 U.S.C. §§ 3161(h)(7)(B)(i).
8. The additional time requested herein is not sought for purposes of delay and the denial of this request for a continuance could result in a miscarriage of justice.
9. In light of the above, the parties stipulate to continue Mr. Lusby's trial date.

CONCLUSION OF LAW

For all the above-states reasons, the ends of justice served by granting said continuance outweigh the best interest of the public and the defendant in a speedy trial, since the failure to grant said continuance would be likely to result in a miscarriage of justice, would deny the parties herein sufficient time and the opportunity within which to be able to effectively and thoroughly prepare for trial, taking into account the exercise of due diligence. The continuance requested by the parties is excusable under the Speedy Trial Act, Title 18, United States Code,


Section (h)(7)(A), when considering the factors under Title 18, United States Code, Sections 3161(h)(7)(B)(i) and (iv).

ORDER

IT IS HEREBY ORDERED that the trial in this matter scheduled for December 14, 2020 at the hour of 9:00 a.m., is hereby vacated and continued to the 25th day of January, 2021 at the hour of 9:00 a.m. in courtroom 6C.

IT IS FURTHER ORDERED that the calendar call scheduled for December 8, 2020, at 8:45 a.m., be vacated and continued to the 19th day of January, 2020 at the hour of 8:45 a.m. in courtroom 6C.

DATED this 30th day of November, 2020.



The Honorable Andrew P. Gordon
United States District Judge

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